

**Case3:09-cv-04560-EDL**

FILED  
09 NOV -6 AM 11:47  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIF.

1 Scott M. Vogler  
2 750 Park Drive  
3 Ben Lomond, Ca. 95005  
4 (831) 252-4663  
5 (831) 336-8218  
6 pocketbikesunlimited@msn.com  
7 Defendant

8  
9

10 UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 Case3:09-cv-04560-EDL

13 **MOTION**

14

15 Defendant Scott Vogler wishes to file a motion to dismiss the complaint for failure  
16 to state a claim.

17 Defendant states that the design and function of this product was already in use for  
18 the application(s) that Plaintiff is claiming.

19 Said product was advertised on the internet on June 2, 2003 and was first offered  
20 for sale on June 15, 2003 for the same 2 stroke motor design that the Plaintiff is  
21 accusing the Defendant of copying.

22 Plaintiff did not file for a Patent until October 28, 2005 2 years and 4 months after  
23 PSWS Racing had designed and been selling the Original which is the same design  
24 that the Plaintiff is representing as "his own design", See EXIBITS A & B.

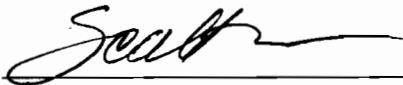
25 The product is pictured and described in detail see EXIBIT C in paragraph titled  
26 "new product announcement".

27 The Defendant asks that the court honor the motion and dismiss the  
28 entire complaint with prejudice due to the fact that this product was offered for sale

29 by several companies over 2 years prior to an application being filed by the  
30 plaintiff. See EXIBITS D & E.  
31 Plaintiff has never manufactured nor has he attempted to market or sell this product  
32 for which the demand and popularity for such an item has diminished greatly and  
33 was never strong see EXIBITS F & G therefore even if a jury were to find in the  
34 favor of the plaintiff, one would find it very difficult to award a judgment as his  
35 loss of sales and or damages are non existent.  
36 May it also be know that due to the lack of market for this product all companies  
37 that manufactured this item stopped manufacturing about 2 years ago.  
38 Defendant has sold only 16 units in total beginning in August of 2004 see  
39 EXIBITS H & I which is 2 months prior to meeting with Plaintiff to discuss his  
40 Design over 5 years ago.  
41 We again ask that the court dismiss the entire complaint with prejudice as this case  
42 has no proof that any laws were violated and that the Defendant has never  
43 manufactured any products other than to sell another manufacturers item that had  
44 long been available in the market and perhaps the Plaintiff may wish to seek  
45 damages from one of the companies that physically manufactured his so called  
46 design.

47  
48 Date: 11/4/09

49  
50 Signed: Scott Vogler, sole proprietor of Pocket Bikes Unlimited

51   
52 \_\_\_\_\_

53  
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59



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Universal access  
to human knowledge

EXHIBIT A

### Announcements (more)

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launch event](#)

[Project funded  
to add features  
to a Million  
books](#)

[Book Reader  
supports  
Zooming](#)

### Web

150 billion pages



<http://pswsracing.com>

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Welcome  
to the **RSS**  
Archive

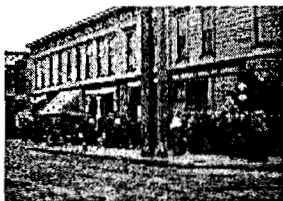
The Internet Archive,  
a 501(c)(3) non-  
profit, is building a  
digital library of  
Internet sites and  
other cultural  
artifacts in digital  
form. Like a paper  
library, we provide  
free access to  
researchers,  
historians, scholars,  
and the general  
public.

### Moving Images

221,659 movies

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[Curator's Choice](#) (more)



#### [\[San Francisco Earthquake Aftermath, Part 3](#)

Chilling post-earthquake  
footage, shot in the  
Western Addition and on  
Market Street in San...

[Recent Reviews](#)

[Beast of Yucca Flats](#)

Average rating:

[Behave Yourself](#)

Average rating:

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70,202 concerts

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#### [Live Music Archive](#)

[Telepath Live at Alumni Hall](#)

[- UNC Asheville on...](#)

Infinite Paradise Station India  
Haze All Fruits Ripe Black Box  
Realize Can't Come Down  
Deeper Still

[Recent Reviews](#)

[Mr. Blotto Live at](#)

[Oysterpalooza on 2009-10-11](#)

Average rating:

[Disco Biscuits Live at The  
Great American Music Hall on  
2000-10-13](#)

Average rating:

### Audio

427,313 recordings

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#### [lifeforms \(redone and refined\)](#)

the return of the first  
xenotom release from 2002.  
originally published as  
limited edition...

[Recent Reviews](#)

[Burl Ives-01-10](#)

Average rating:

[exotica](#)

Average rating:

### Texts

1,723,040

texts

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(more)

#### [Design and details of a reinforced concrete...](#)

Thesis (B.S.)--  
Armour Institute  
of Technology,  
1908

[Recent Reviews](#)

[Epistolario di  
Coluccio Salutati](#)

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Encyclopaedia  
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118 Results

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0	0	0	0	0	3 pages	11 pages	15 pages	30 pages	33 pages	11 pages	8 pages	0	0
pages	pages	pages	pages	pages								pages	pages
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					<a href="#">Jul 19, 2001</a> *	<a href="#">Jun 01, 2002</a>	<a href="#">Feb 10, 2003</a>	<a href="#">Mar 24, 2004</a> *	<a href="#">Jan 22, 2005</a>	<a href="#">Apr 02, 2006</a>	<a href="#">Jan 11, 2007</a>		
					<a href="#">Nov 11, 2001</a>	<a href="#">Jun 02, 2002</a>	<a href="#">Feb 16, 2003</a> *	<a href="#">Mar 29, 2004</a>	<a href="#">Jan 26, 2005</a>	<a href="#">May 19, 2006</a>	<a href="#">Jan 16, 2007</a>		
						<a href="#">Aug 03, 2002</a> *	<a href="#">Mar 23, 2003</a>	<a href="#">Apr 21, 2004</a> *	<a href="#">Feb 07, 2005</a>	<a href="#">Jun 13, 2006</a>	<a href="#">Jan 21, 2007</a>		
						<a href="#">Sep 23, 2002</a>	<a href="#">Mar 24, 2003</a>	<a href="#">Jun 09, 2004</a> *	<a href="#">Feb 08, 2005</a>	<a href="#">Jun 17, 2006</a>	<a href="#">Jan 26, 2007</a>		
						<a href="#">Sep 25, 2002</a>	<a href="#">Apr 21, 2003</a>	<a href="#">Jun 11, 2004</a>	<a href="#">Feb 10, 2005</a>	<a href="#">Jul 19, 2006</a>	<a href="#">Feb 16, 2007</a>		
						<a href="#">Sep 28, 2002</a>	<a href="#">Jun 02, 2003</a> *	<a href="#">Jun 16, 2004</a>	<a href="#">Feb 21, 2005</a>	<a href="#">Aug 04, 2006</a>	<a href="#">May 01, 2007</a> *		
						<a href="#">Sep 29, 2002</a>	<a href="#">Jun 07, 2003</a>	<a href="#">Jun 19, 2004</a>	<a href="#">Mar 04, 2005</a>	<a href="#">Aug 30, 2006</a>	<a href="#">May 14, 2007</a>		
						<a href="#">Nov 24, 2002</a> *	<a href="#">Jun 09, 2003</a>	<a href="#">Jun 27, 2004</a>	<a href="#">Mar 21, 2005</a>	<a href="#">Sep 07, 2006</a>			
						<a href="#">Nov 27, 2002</a>	<a href="#">Jun 19, 2003</a> *	<a href="#">Jul 15, 2004</a>	<a href="#">Apr 02, 2005</a>	<a href="#">Sep 09, 2006</a>			
						<a href="#">Nov 30, 2002</a>	<a href="#">Jul 27, 2003</a>	<a href="#">Jul 17, 2004</a>	<a href="#">Apr 13, 2005</a>	<a href="#">Oct 04, 2006</a>			
							<a href="#">Jul 28, 2003</a>	<a href="#">Jul 24, 2004</a>	<a href="#">Apr 14, 2005</a>				
							<a href="#">Oct 13, 2003</a> *	<a href="#">Jul 27, 2004</a> *	<a href="#">Jun 25, 2005</a> *				
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							<a href="#">Nov 19, 2003</a>	<a href="#">Aug 20, 2004</a> *	<a href="#">Jul 05, 2005</a>				
								<a href="#">Aug 22, 2004</a>	<a href="#">Jul 07, 2005</a>				
								<a href="#">Aug 30, 2004</a> *	<a href="#">Jul 10, 2005</a>				
								<a href="#">Aug 31, 2004</a>	<a href="#">Jul 12, 2005</a>				
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								<a href="#">Oct 14, 2004</a> *	<a href="#">Jul 25, 2005</a>				
								<a href="#">Nov 02, 2004</a> *	<a href="#">Jul 27, 2005</a>				
								<a href="#">Nov 06, 2004</a> *	<a href="#">Aug 05, 2005</a>				
								<a href="#">Nov 07, 2004</a>	<a href="#">Aug 26, 2005</a> *				
								<a href="#">Nov 12, 2004</a>	<a href="#">Aug 27, 2005</a>				
								<a href="#">Nov 23, 2004</a> *	<a href="#">Aug 28, 2005</a>				
								<a href="#">Dec 02, 2004</a>	<a href="#">Aug 29, 2005</a>				
								<a href="#">Dec 13, 2004</a>	<a href="#">Aug 31, 2005</a>				
									<a href="#">Sep 01, 2005</a>				
									<a href="#">Sep 08, 2005</a>				
									<a href="#">Dec 15, 2005</a> *				

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Providing sales, service & high-performance parts  
& accessories for Go-Peds® & R/C Cars and Trucks.  
Home of the Super-Stock Engine Mod Package



**GSR40  
is HERE!**

Check out the new Go-Ped  
GSR40!!  
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**Go-Ped®**

**Go-Ped®:**

If it doesn't say Go-Ped®, Then it is  
NOT a Go-Ped®

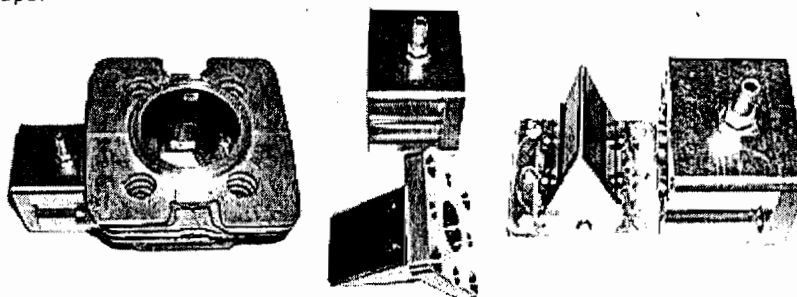
Go-Ped is the market leader in  
motorized scooter sales, and is an  
established brand among extreme  
sports enthusiasts. Go-Peds are also  
growing in popularity as an alternative  
transport vehicle for city dwellers with  
short or disconnected commutes.  
[click]

**PSWS Racing Rocket Sprocket "Package Deal" up to  
\$24.00 off!!**

Now buy any combination of our ultra high quality front and rear Rocket  
Sprockets and get a huge savings!!! You choose the sizes you want to  
combine and get \$10.00 off. That's a deal. buy a second set and save  
\$12.00 per pair, that's \$24.00!

#### NEW PRODUCT ANNOUNCEMENT:

The secret is out...We have been developing a reed conversion for the  
GSR 40. More and more people are calling about this exciting new  
performance product in development, it is obvious to us that the secret  
is out. Our new CNC Billet reed cage uses twin carbon fiber reed petals  
with a second tensioning petal. Reed tension can be adjusted by altering  
position and length of the tensioning petal. Our reed cage is designed to  
accept many different carbs including Our Rocket carb, stock GSR, TS1,  
ADA, G23ORC, WA167, Alcohol, and many others. PSWS stage 1 reed  
ported cylinders are nearly completed. The port design and layout is the  
secret to reed power. The stage 1 cylinders port layout is complete, final  
cylinders will be a modified GRS cylinder with a combination of CNC  
porting and hand finishing. Potential stage 2 and 3 cylinders are in  
development and have shown power beyond our expectations. A bolt on  
kit will be offered including PSWS rocket reed ported piston and cylinder,  
rocket carb, reed cage and adapter, and all necessary hardware. Reed  
cages with adapters will be available seperately for dealers, racers and  
do it yourself mod builders. Expect cages and adapters to be available  
by June 15th. Here are some photos of one of the prototype reed set  
ups.



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**1998 & 1999  
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National World  
Champions!!**



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**What's Hot  
at PSWS Racing**

The new Super Strong,  
High Performing Go-Ped  
GSR40! Equipped with  
the unbeatable Komatsu  
Zenoah 41.5cc Engine, a  
very ingenious chain  
driven system, a wider  
deck and dual disk  
brakes, The Go-Ped®  
Speed Racer is the  
Cruisers' Dream Come  
True.

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**R/C  
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Modifications**

**EXHIBIT C**

Google™ ada 49cc

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Due to a change in the approach that WIKISCOOTIA is maintained, the site has moved

to a new system. The new scooter wiki can be found at

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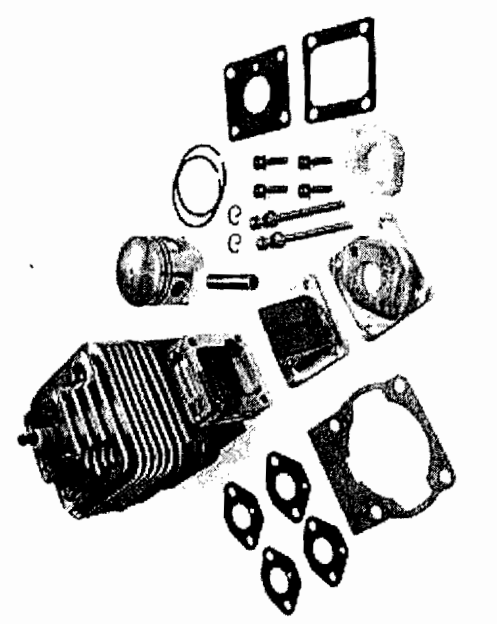
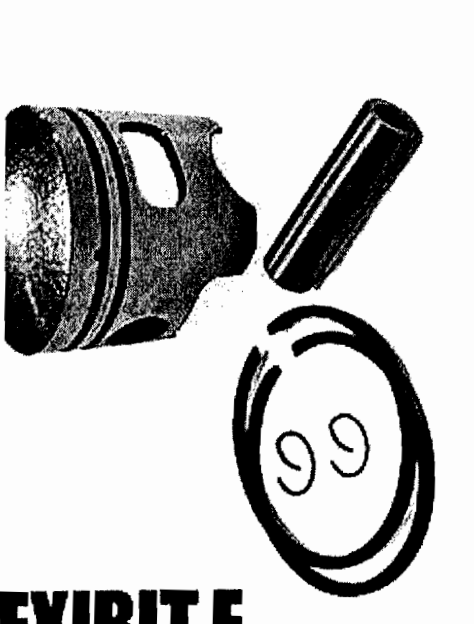
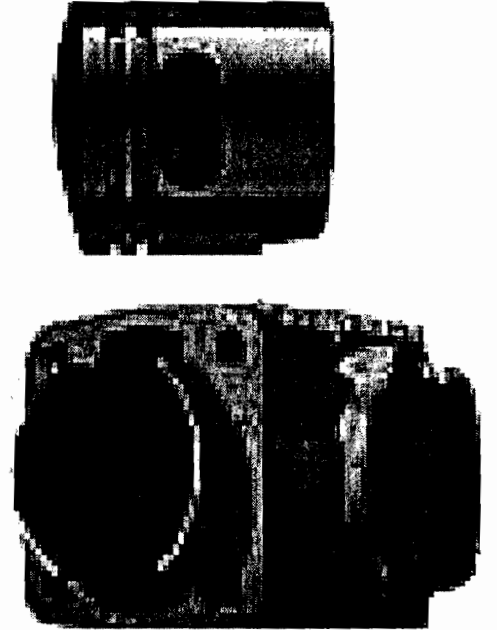
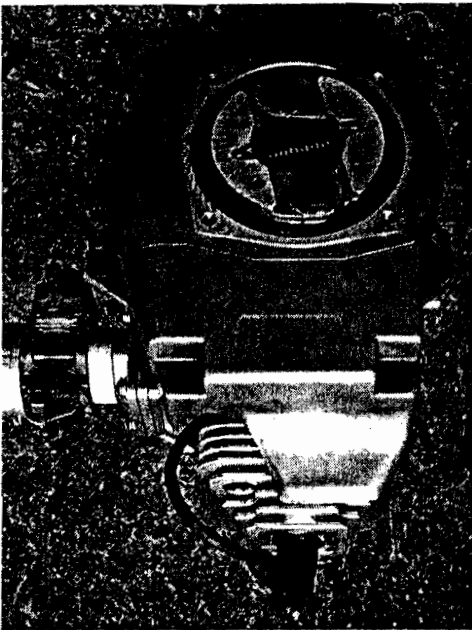
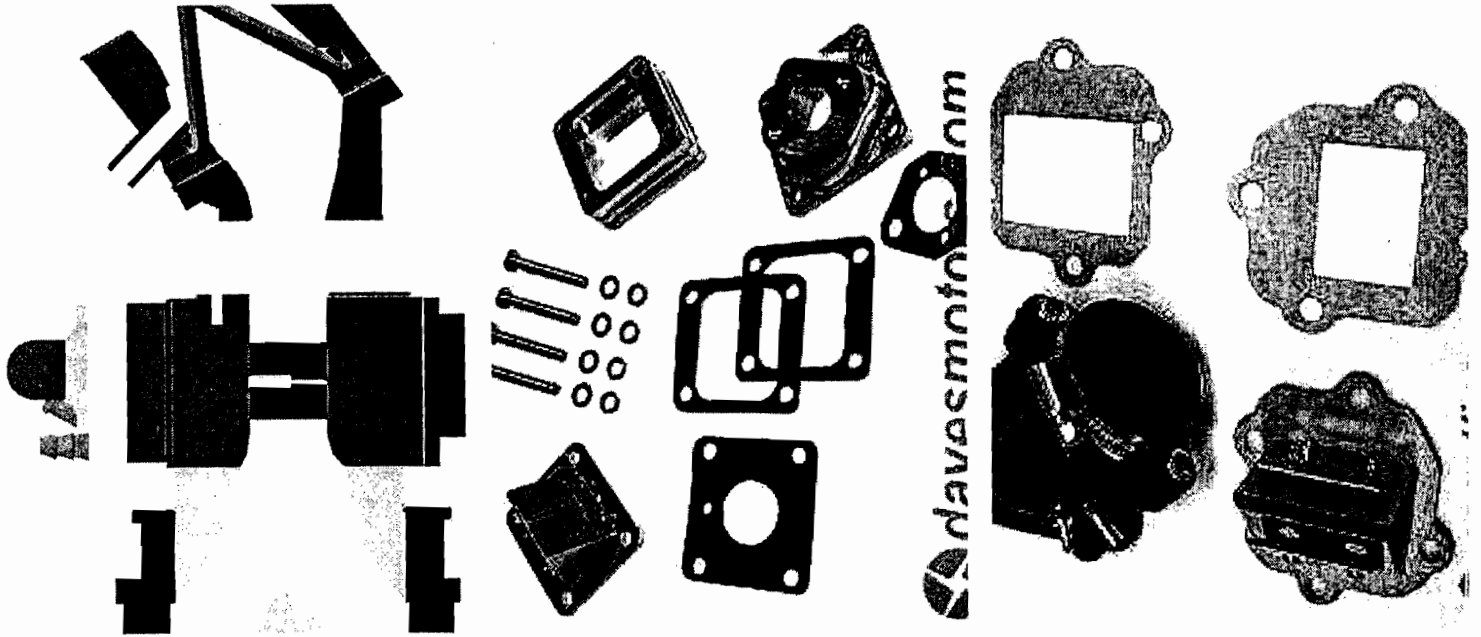
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## ADA Head Kit Reed Cage 49cc

The ADA head kits with reed is a complete kit and ported cylinder. The cylinder features extensive race porting for optimal reed performance. HUGE gains throughout the entire powerband. Greatly improved throttle response and acceleration. Much cleaner revving on the top with a 5+MPG gain. This kit will get the most power possible out of a 49cc engine. (1)



# EXHIBIT D



**EXHIBIT E**



**From:** ADA Racing Sales (adasales@adaracing.com)  
**To:** 'Scott Vogler Builders'  
**Date:** Mon, October 5, 2009 11:32:32 AM  
**Subject:** RE: Contact From ADA Racing Website

We discontinued these due to the declining popularity of the pocketbikes and because all of the aftermarket products we were designing and making kept getting knocked-off in China .

Regards,

ADA Racing Sales  
480-507-6919  
[www.adaracing.com](http://www.adaracing.com)

---

**From:** Scott Vogler Builders [mailto:scott@voglerconstruction.com]  
**Sent:** Saturday, October 03, 2009 3:06 PM  
**To:** ADA Racing Sales  
**Subject:** Re: Contact From ADA Racing Website

Hi,

Thank you for your fast reply, is there any reason that no one makes this any more, would I be better off not to search for one.

Thank you,  
**Scott Vogler**  
**Vogler Builders**  
**831-252-4663**

---

**From:** ADA Racing Sales <adasales@adaracing.com>  
**To:** scott@voglerconstruction.com  
**Sent:** Saturday, October 3, 2009 2:18:17 PM  
**Subject:** RE: Contact From ADA Racing Website

Sorry, but we no longer sell that item and haven't for quite awhile. Your best bet is to check on some of the online pocketbike forums for a used setup.

Regards,

ADA Racing Sales  
480-507-6919  
[www.adaracing.com](http://www.adaracing.com)

---

**From:** scott@voglerconstruction.com [mailto:scott@voglerconstruction.com]  
**Sent:** Saturday, October 03, 2009 1:15 AM  
**To:** adasales@adaracing.com  
**Subject:** Contact From ADA Racing Website

You have received a message from a website user.

**EXHIBIT F**



Print

Close

Re: 49 reed

From: **DDM (Dave's Discount Motors)** (sales@davesmotors.com)

Sent: Mon 10/05/09 8:48 AM

To: MARYANN COSTELLA (maryanncostella@msn.com)

Sorry, we don't... check [www.adaracing.com](http://www.adaracing.com) they might have some left...

Brad

On Sat, Oct 3, 2009 at 2:23 AM, MARYANN COSTELLA <[maryanncostella@msn.com](mailto:maryanncostella@msn.com)> wrote:

Hi,

Do you guys still sell the 49cc reed valve upgrade for the cat eye bike.

Thank you,

Stevo

Your E-mail and More On-the-Go. Get Windows Live Hotmail Free. [Sign up now.](#)

**EXHIBIT G**

POCKET BIKES UNLIMITED

6281 GRAHAM HILL RD  
FELTON, CA 95018**Invoice**

Date	Invoice #
8/19/2004	1306

<b>Bill To</b>
HOUSTON POCKET BIKES 16502 CAIRNGORM HOUSTON, TX. 77084

<b>Ship To</b>
HOUSTON POCKET BIKES 16502 CAIRNGORM HOUSTON, TX. 77084

P.O. No.	Terms	Due Date	Account #	Ship Date	Ship Via	Project
		8/19/2004	V-587	8/19/2004		

Description	Qty	COST	MSRP	AMOUNT
47cc Footpegs	4	31.00		124.00
47cc 74 TOOTH SPROCKET KIT	2	19.00		38.00
47cc 63 TOOTH SPROCKET KIT	2	19.00		38.00
47cc V STACK AND FILTER FOR STOCK CARB	2	21.00		42.00
49cc Billet Pegs (Round)	4	11.00		44.00
49cc 36 TOOTH SPROCKET SET	2	19.00		38.00
47cc DUAL STAGE REED KIT	4	22.00		88.00
47cc STAGE 3 KIT W/BOOST	2	265.00		530.00
49cc HIGH PERFORMANCE 4 PEDAL REED SYSTEM	1	84.00		84.00
SHIPPING AND HANDLING CHARGE		44.00		44.00
<b>Total</b>				\$1,070.00
<b>Balance Due</b>				\$1,070.00

<b>Phone #</b>
8313368218

**EXHIBIT H**

## POCKET BIKES UNLIMITED

6281 GRAHAM HILL RD  
FELTON, CA 95018

**Invoice**

Date	Invoice #
8/10/2004	1290

Bill To
RIFLE PAINT AND SUPPLY 2118 AIRPORT ROAD RIFLE, CO. 81650

Ship To
RIFLE PAINT AND SUPPLY 2118 AIRPORT ROAD RIFLE, CO. 81650

P.O. No.	Terms	Due Date	Account #	Ship Date	Ship Via	Project
		8/10/2004	V-CODE 652	8/10/2004		
Description		Qty	COST	MSRP	AMOUNT	
49cc 36 TOOTH SPROCKET SET		2	19.00		38.00	
X-1, X-2 ROCKET PERFORMANCE KEY		3	6.50		19.50	
X-1, X-2 PERFORMANCE EXHAUST SYSTEM		2	90.00		180.00	
49cc, X1, X2 BIG BORE CARBURETOR KIT		2	84.00		168.00	
49cc, X-1, X-2 BLAST BOX WITH ADAPTOR		1	69.00		69.00	
49cc PERFORMANCE EXHAUST SYSTEM		1	90.00		90.00	
49cc, X-1 & X-2 4 PEDAL REED SYSTEM		1	84.00		84.00	
49cc ROCKET PERFORMANCE KEY		2	6.50		13.00	
47cc ROCKET PERFORMANCE KEY		1	6.50		6.50	
49cc NGK SPARK PLUGS		8	3.25		26.00	
47cc NGK SPARK PLUG		4	3.25		13.00	
SHIPPING AND HANDLING CHARGE			16.00		16.00	
				<b>Total</b>	\$723.00	
				<b>Balance Due</b>	\$723.00	

Phone #
8313368218

**EXHIBIT I**